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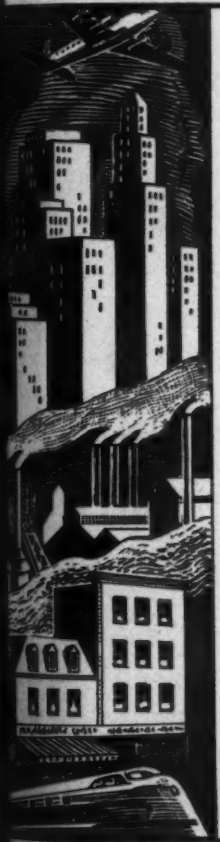

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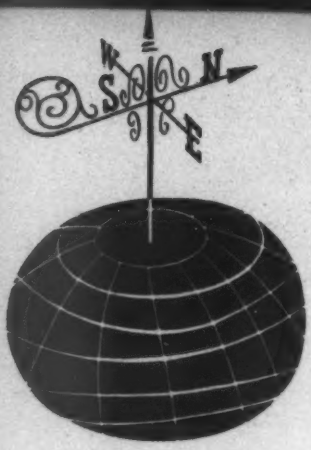

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CORPORATION JOURNAL

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APRIL---MAY 1952

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If litigation — between the heirs of one of your company's stockholders, or between a stockholder and an outside party—or if investigation by an unfriendly stock interest or by a state or Federal taxing body—should require you suddenly to produce your stock records for searching legal examination . . . could you comply without uneasiness as to their clarity, accuracy and completeness?

The proper keeping of a corporation's stock records has in these days become a matter of too much consequence in too many different ways to be left to less than expert and unflagging care that is assured by appointment of The Corporation Trust Company as a company's transfer agent.

unlicensed foreign corporations

Some Unusual State Requirements

OUTSTANDING, and perhaps unique, among state statutory provisions applicable to a foreign corporation is a Maryland registration requirement applicable to corporations engaged only in interstate or foreign commerce in Maryland. In effect since 1937, and interwoven among the qualification requirements, this provision obliges a foreign corporation engaged in interstate or foreign business to appoint a resident agent and certify his name and address to the State Tax Commission, together with a corporate mailing address. The statutory purpose is apparently to make available to citizens of the state an effective means of serving process upon an unlicensed foreign corporation, carrying on such business, in any action in which it may be subject to suit in the state courts. This provision does not appear to have been construed as to its validity by any Maryland state court of record.

It may be noted that Hawaii has provided for somewhat similar registration of foreign corporations engaged in interstate or foreign commerce in that Territory, under Act 294, which became effective July 1, 1951.

In the states mentioned below, there are requirements that a foreign corporation be authorized to do business as such, as a condition of complying with or securing benefits under some state law. These requirements are found in either a specific statutory provision or an administrative direction, and compliance may or may not involve the question of whether the company is doing intrastate business so as to be required to be qualified as a foreign corporation.

The Illinois Blue Sky Law in Section 34, contains provisions that if the issuer of any securities is a foreign corporation, and it desires to make sales of its securities under the Blue Sky Law, no statement or document may be filed and no registration of such securities may be granted until the foreign corporation has complied with the law regulating the admission of foreign corporations to transact business in Illinois.

The West Virginia Workmen's Compensation Law, (Code 1931, Ch. 23, Art. 2, provides that a foreign corporation employer, electing to comply with and receive benefits under this law, must first furnish a certificate from the Secretary of State showing that it has obtained authority to do business in West Virginia. In practice, the Compensation Commissioner is furnished with a certified copy of the certificate of authority issued by the Secretary of State.

In Alabama, under a ruling of the Attorney General, foreign corporations are required to comply with the foreign corporation laws before operations may be begun under authority granted to operate as a general contractor by the State Licensing Board. There, also, by Code of 1940, Title 50, Section 8, a foreign corporation submitting a bid which may result in a contract for a public improvement, must accompany

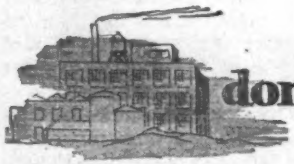
its application with a certificate of the Secretary of State that the corporation is authorized to do business in Alabama.

Likewise, in Arizona, when applying for a general contracting, general engineering or specialty contracting license, which is secured from the State Registrar of Contractors, a foreign corporation must be licensed to do business by the state Corporation Commission, or such a contracting license may not be issued. (Laws 1951, Chapter 55, Section 6.)

In New Mexico, a state contractor's license may not be issued by the Contractor's License Board to a foreign corporation which has not qualified to do business in the state. (Stats. 1941, Sections 51-1905—51-1907.)

In Virginia, the date authority was obtained to do business from the State Corporation Commission must be supplied by foreign corporations which apply for licenses to local Commissioners of Revenue to do business as contractors, electrical contractors, plumbers and steamfitters.

In Wisconsin, a foreign corporation seeking to register a trade-mark must first be licensed to do business as a foreign corporation. (Sec. 132.01, Wis. Stats.)



domestic corporations

DELAWARE

Chancery Court refuses to rule voting trust permanently void, where prior suit involving stock held under escrow agreement was being appealed.

In *Smith v. The Biggs Boiler Works Company et al.*, 82 A. 2d 372, (The Corporation Journal, October, 1951, page 5), the Court of Chancery, New Castle County, held a voting trust invalid during the time stock was currently held under an escrow agreement and could not, therefore, be deposited in accordance with a statutory provision governing voting trusts. In a companion suit, instituted after the expiration of the escrow agreement, seeking to have the voting trust agreement permanently voided, the Chancery Court noted that an appeal had been taken in the suit first mentioned by the corporate defendant alone to the Delaware Supreme Court, and that, pending the decision by the higher court, the defendant voting trustees had filed an action in an Ohio county court, seeking to have the same voting trust declared valid. Regarding this as demonstrating an open and deliberate disregard for the jurisdiction and decrees of the Court of Chancery, that court observed that "In such cases a court of equity will have no hesitation in enjoining the prosecution of the foreign suit."

Noting that both individual defendants were citizens of Ohio and that they could not personally be served in Delaware, the court, while not granting the restraining order prayed for, outlined action it might take if a new application were made for a restraining

order against the same parties, joining the corporation as a defendant, accompanied by a sufficient showing that plaintiff may suffer irreparable injury. The court indicated it might then seriously consider enjoining the corporation itself from the transfer of any stock or the doing of any other act whatsoever, whether pursuant to some subsequent decree of the Ohio court or not, which might conflict with its holding in the companion suit, until a final disposition of both actions in the courts of Delaware. "Any defiance of such an injunctive order," concluded the court, "might then call for appropriate action under Sec. 48 of the General Corporation Law."

Smith v. The Biggs Boiler Works Company et al., Court of Chancery, New Castle County, December 10, 1951. John Van Brunt, Jr., David Snellenburg, II, of Wilmington, attorneys for plaintiff. William E. Taylor, Jr., of Wilmington, Attorney for defendants. Commerce Clearing House Court Decisions Requisition No. 466105.

NORTH CAROLINA

Temporary injunction continued where issued to prevent proposed issuance of large amount of additional capital stock and where plaintiff minority stockholder was unable to exercise his preemptive rights and value of his stock would be greatly reduced.

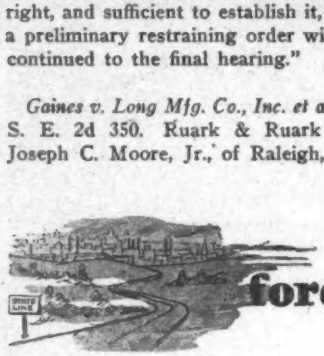
Plaintiff, owning two shares of stock in defendant corporation and the three individual defendants owning a total of the remaining eight shares outstanding, sought a permanent injunction to prevent a proposed issuance of additional capital stock and had been successful in obtaining a temporary injunction in the county court.

Upon appeal, the Supreme Court of North Carolina ruled that a cause of action was stated for equitable relief against the majority stockholders and that serious questions of fact existed to entitle the plaintiff to a temporary injunction until the final hearing, upon facts showing that, at the last annual meeting of stockholders, plaintiff had voted against and the individual defendants had voted for a resolution seeking working capital and the retirement of the corporate indebtedness through the issuance of the remaining unissued authorized capital stock of defendant, consisting of 990 shares to be sold at not less than $100 per share. Each stockholder was to be entitled, until a specified date, to subscribe for 99 shares of new stock for each share owned, at the rate of $100 per share. Plaintiff, being unable financially to participate in the subscription, alleged working capital was not required by the corporation, which was in a position to liquidate its indebtedness and to have current assets of more than $250,000 remaining; further, that the resolution was a culmination of an agreement among the individual defendants in bad faith and in breach of their trust as officers and directors to render the stock of plaintiff practically valueless and so to deprive plaintiff of the value of his stock.

The court, ruling in favor of the plaintiff observed: "It is established by well considered decisions of this Court that in actions of this character, the main purpose of which is to obtain a perma-

nent injunction, if the evidence raises a serious question as to the existence of facts which make for the plaintiff's right, and sufficient to establish it, that a preliminary restraining order will be continued to the final hearing."

Gaines v. Long Mfg. Co., Inc. et al., 67 S. E. 2d 350. Ruark & Ruark and Joseph C. Moore, Jr., of Raleigh, and Battle, Winslow, Merrill & Taylor of Rocky Mount, for plaintiff-appellee. Henry C. Bourne of Tarboro, for defendants-appellants. (*Note:* In a companion decision, rendered simultaneously, *Gaines v. Long Mfg. Co., Inc. et al.*, 67 S. E. 2d 355, the plaintiff was successful in obtaining a ruling that his complaint stated a cause of action to require the declaration of a dividend.)



foreign corporations

ALASKA

Withdrawn corporation ruled not subject to service of process upon statutory agent whose authority had been revoked.

Defendant, a State of Washington corporation, being sued in a personal action for personal property taxes and penalties, contended the United States District Court, First Division, Juneau, lacked jurisdiction over it in a substantive as well as procedural sense. In May, 1950, it had revoked a previously filed designation of its statutory agent for the service of process and had withdrawn, filing its certificate of withdrawal. Steps looking toward its dissolution in Washington had been initiated but not completed in April, 1951, when this suit was instituted. It was conceded that at the commencement of the action, defendant had no property in Alaska subject to attachment or to which the tax lien had attached and presumably this was the reason for resorting to a personal action. Service was had on the former statutory agent and on the Clerk of this Federal Court.

The court ruled that the revocation of the agent's authority placed the defendant beyond the reach of process at the commencement of the action, and that the service should be quashed. Citing a number of statutory provisions which the court referred to as a "statutory scheme," the court stressed that the authority of the agent commenced with the filing of the certificate designating him and ended with the filing of a revocation, and observed that the conclusion was warranted "that upon revocation of the agent's authority the corporation is no longer amenable to local process." The court also reached the conclusion that, under the statutory scheme, the authority of the Clerk of the Court to accept service of process also ended with the revocation of the agent's authority and the withdrawal of the defendant, with a consequent loss of jurisdiction.

Kane School District v. P. E. Harris & Co., 101 F. Supp. 290. Wm. L. Paul, Jr., of Juneau, for plaintiff. R. E. Robertson of Juneau, for defendant.

CALIFORNIA

Process upheld where corporation maintained two offices, solicited business and administered contracts, in suit not related to business done in state.

"The only question to be determined," remarked the District Court of Appeal, Second District, Division 2, California, "is whether jurisdiction may be maintained over a foreign corporation engaged solely in interstate or foreign commerce in the State of California when the subject matter of the action is wholly unrelated to any of the business conducted by such corporation in this State."

The court regarded the corporation's activities within the state as sufficient to render it amenable to suit under circumstances which it outlined as follows: "Petitioner maintains two offices in this state, in one of which it has three or four employees engaged in the solicitation of business; the other office, which it has maintained continuously since 1938, employs approximately 24 persons for the purpose of administering its contracts for the purchase of airplanes and airplane parts, such contracts being in excess of $1,000,000. a year. It accepts delivery of the planes in this state. It maintains a bank account and owns four automobiles. Since this is a transitory action, the court has jurisdiction hereof and since petitioner is doing business in the state and amenable to process it is immaterial that the subject matter is wholly unrelated to any of the business conducted by the petitioner in this state."

Koninklijke Luchtvaart Maatschappij v. Superior Court in and for Los Angeles County, 237 P. 2d 297. Guthrie, Darling & Shattuck and Milo V. Olson of Los Angeles, for petitioner. Harold W. Kennedy, County Counsel, John B. Anson, Deputy County Counsel, Los Angeles, for respondent. Benjamin D. Mathon, Raoul D. Magana and Kaplan, Livingston, Goodwin & Berkowitz, Warren M. Goodwin of Los Angeles, for real parties in interest.

MASSACHUSETTS

Service of process upheld where made on Massachusetts agent of foreign corporation selling tickets and space on vessels between New York and foreign ports.

In an action of tort in a Massachusetts Federal District Court between citizens of that state and defendant corporation, organized under the laws of Genoa, Italy, service was made upon a corporation which was the exclusive general agent of the defendant in Massachusetts. This agent solicited passenger business in ships of defendant plying between New York and foreign ports, allocating space and selling tickets without confirmation of defendant, distributed advertising matter and literature, and received complaints concerning transportation on defendant's line, which it attempted to straighten out.

The court denied defendant's motion to dismiss, concluding that its undertakings in Massachusetts went beyond mere solicitation and constituted the actual transaction of substantial business, rendering defendant amenable to service of process within the District.

Ippolito et al. v. Societa Di Navigazione Italia, 100 F. Supp. 73. Arthur E. Gozzi of Boston, for plaintiffs. Thomas H. Walsh (specially) of Boston, for defendant.

NEW YORK

Corporation furthering foreign commerce held entitled to maintain suit.

In a suit instituted by a foreign corporation engaged in the conduct of business in foreign commerce, the New York Supreme Court, Special Term, Part I, ruled: "It appears that the plaintiff is engaged in the conduct of business in foreign commerce and that the contract sued upon constitutes business in interstate or foreign commerce. Accordingly, section 210 of the General Corporation Law does not apply (see International Text Book Co. v. Tone, 220 N. Y. 313; International Fuel & Iron Corp'n v. Donner Steel Co., Inc., 242 N. Y. 224; M. M. Mades Co. v. Gassman, 77 N. Y. S., 2d 236, 238). Motion to dismiss is denied."

Co-operative for Am. Remittances to Europe, Inc. v. McCadam Cheese Co., Inc., 126 N. Y. L. J. 203. Commerce Clearing House Court Decisions Requisition No. 461561.

City court declines jurisdiction of nonresident's claim against a foreign corporation, assigned to resident, involving shipment from Florida to Canada.

"The defendant, a foreign corporation," observed the City Court of New York, Special Term, Part I, "seemingly does business in New York, but has no trackage within the state." The suit involved the alleged spoilage of tomatoes shipped by a consignor located in Florida to a consignee in Montreal, Canada. The Florida consignor had assigned his cause of action to a resident of New York, the plaintiff.

The court granted defendant's motion to dismiss the action on the ground that its maintenance within the jurisdiction constituted an undue burden upon commerce. It noted that the contract had not been made in New York, no residents of New York were involved in the contract of shipment and that there appeared to be no witnesses located in the State of New York who could testify about the issues. The court remarked that the assignment to a resident did not aid the plaintiff and concluded that acceptance of the suit would unduly hamper interstate and foreign commerce.

Cincis v. Seaboard Air Line Ry., 126 N. Y. L. J. 1470. Commerce Clearing House Court Decisions Requisition No. 465989.

Systematic solicitation of merchandise sales, coupled with corporation's banking locally, regarded as sufficient to uphold service of process.

Defendant foreign corporation sought to have service of process made upon it set aside in a suit involving the purchase of merchandise from the plaintiff, under a contract made in the state. Defendant solicited business in the state, 25% of its gross sales being made there. From the time of its incorporation, its banking had been done with a New York City bank. It submitted no testimony claiming that orders obtained in the state required acceptance in another state in order to become binding on the defendant.

The New York Supreme Court, Special Term, Part I, denied the motion to set the service aside, regarding the defendant's activities as sufficient to render it amenable to suit in the state.

Railway Supply & Mfg. Co., Inc. v. Supreme Felt Corporation, New York Supreme Court, New York County, Special Term, Part I, December 6, 1951; 126 N. Y. L. J. 1528. Commerce Clearing House Court Decisions Requisition No. 467950.

OHIO

Supreme Court of the United States rules Ohio courts to be free to determine whether or not to accept jurisdiction over Philippine company, in suits not touching its Ohio activities, where president, who was served, directed its activities from Ohio during occupation of Philippines.

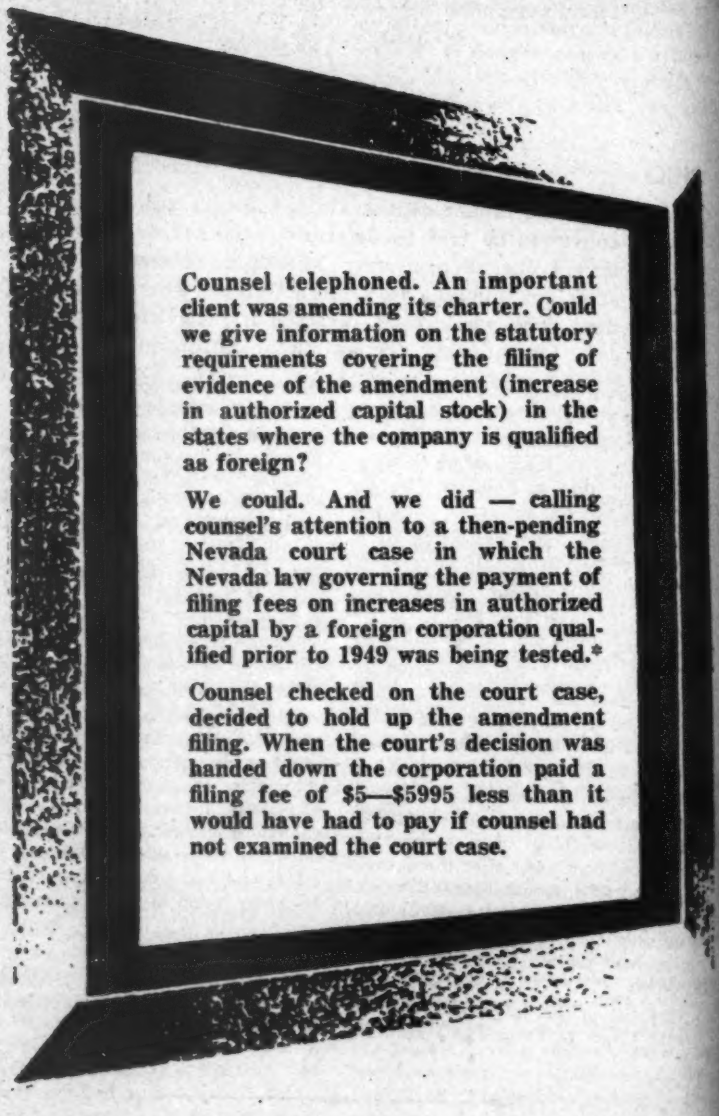
In *Perkins vs. Benguet Consolidated Mining Co. et al.,* 155 O. S. 116, 98 N. E. 2d 33, (The Corporation Journal, June, 1951, page 349), the Supreme Court of Ohio held that a Philippine mining company, was not subject to service of process in that state on a cause of action not touching the corporation's activities in Ohio, where service was attempted to be made upon its president who was in that state awaiting his return to the Philippines. Actions by the petitioner, which were consolidated, sought dividends due her as a stockholder and damages for the company's failure to issue her certificates for certain shares of its stock.

The Supreme Court of the United States, after a consideration of its prior decisions touching upon comparable situations, concluded that there could be found "no requirement of federal due process that either *prohibits* Ohio from opening its courts to the cause of action here presented or *compels* Ohio to do so."

In vacating the judgment of the Supreme Court of Ohio and remanding the cause to that court for further proceedings in the light of its opinion, the Supreme Court examined in detail the activities of the company's president in Ohio in its behalf during the occupation of the company's Philippine properties by the Japanese and voted that many of its wartime activities were directed from Ohio and were being given the personal attention of the president at the time he was served with summons. The court concluded: "Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. Without reaching that issue of state policy, we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding."

Perkins vs. Benguet Consolidated Mining Company, Supreme Court of the United States, March 3, 1952. Commerce Clearing House Court Decisions Requisition No. 469894.

PORTRAIT OF AN ATTORNEY



Counsel telephoned. An important client was amending its charter. Could we give information on the statutory requirements covering the filing of evidence of the amendment (increase in authorized capital stock) in the states where the company is qualified as foreign?

We could. And we did — calling counsel's attention to a then-pending Nevada court case in which the Nevada law governing the payment of filing fees on increases in authorized capital by a foreign corporation qualified prior to 1949 was being tested.*

Counsel checked on the court case, decided to hold up the amendment filing. When the court's decision was handed down the corporation paid a filing fee of $5—$5995 less than it would have had to pay if counsel had not examined the court case.

NG MONEY

nusual circumstances? Yes.

xceptional C T service? Not at all. Collecting and collating information on rporation matters *for lawyers* has been our business for fifty-nine years. at same reservoir of information which saved $5995 for the above wyer's client can be tapped by any lawyer, at any C T office.

mendment. Incorporation. Merger. Dissolution. Qualification. Consolida-on. Withdrawal. Whenever you have to effect a corporation filing—in y state, Canadian province, U. S. territory or possession—call the nearest T office. Information on costs and statutory requirements is yours for e asking.

*A digest of this case, The Texas Company v. John Koontz, Supreme Court of Nevada, appears under "Taxation" in this issue.

taxation

CALIFORNIA

Three-factor apportionment formula ruled applicable to net income of unitary enterprise involving numerous affiliated companies in many states, over objections of a constituent foreign corporation operating in California.

Plaintiff, an Illinois sales subsidiary of an Illinois parent manufacturing corporation, having numerous affiliated companies, had filed its 1938 California franchise tax return according to its separate accounting system and paid the tax computed thereon. Thereafter, it received notice of an additional assessment, based upon the commissioner's determination of plaintiff's California net income, computed through the use of a three-factor formula—property, payroll and sales—in allocating to plaintiff's California business a percentage of net income out of the consolidated net income of all the affiliated companies.

The sole point in controversy was the propriety of the application of this three-factor formula under the circumstances. The court devoted much of its opinion to an outline of the interwoven, intercompany transactions. Upholding the use of the formula, the California Supreme Court emphasized the underlying concept of formula apportionment in the allocation of income from a unitary business; that the unitary income is derived from the functioning of the business as a whole, to which the activities in the various states contribute; and that by reason of such interrelated activities in the integrated overall enterprise, the business done within the state is not truly separate and distinct from the business done without the state so as reasonably to permit of a segregation of income under the separate accounting method rather than the use of the formula method in assigning to the taxing state its fair share of taxable values. The court regarded the application of the three-factor formula as applicable to plaintiff and not open to constitutional objection as operating to tax extra-territorial values.

John Deere Plow Co. v. Franchise Tax Board,* 238 P. 2d 569. Kent & Brookes, Arthur H. Kent and Valentine Brookes of San Francisco, John S. Best of Milwaukee, Wis., and Lewis D. Wilson of Chicago, Ill., for appellant. Fred N. Howser and Edmund G. Brown, Attorneys General, and James E. Sabine and Irving H. Perluss, Deputy Attorneys General. Commerce Clearing House Court Decisions Requisition No. 465412.

* The full text of this opinion is printed in the **State Tax Reporter**, California, page 12,429.

ILLINOIS

Foreign manufacturing company, with no office in state, selling voting machines to municipal election board, under contract approved out of state, and supervising use of machines, ruled not subject to to retailers' occupation tax.

Plaintiff Delaware corporation, although registered as a foreign corporation in Illinois, had no office, telephone listing, warehouse, building or other structure in Illinois. Its only offices and factory were at Jamestown, New York, where it manufactured and sold voting machines as its only stock in trade. The question raised concerned plaintiff's liability to the Illinois retailers' occupation or sales tax by reason of transactions in which plaintiff in New York, after certain promotional work by two traveling salesmen, received invitations by mail from the board of election commissioners of Chicago for the sale of several thousand voting machines. In each instance, bids submitted by plaintiff were accepted and a contract was prepared and signed by the purchaser in Chicago and subsequently signed by the plaintiff in New York, provision being made for the passing of title in Chicago. Delivery of the machines was effected by trucks sent from New York to Chicago. Plaintiff furnished representatives who assisted in the installation of the machines and in their proper operation at voting time.

The Illinois Supreme Court held that the company was not engaged in the business of selling tangible personal property at retail in Illinois so as to be subject to the retailers' occupation tax. The court observed: "As pointed out by plaintiff, the Illinois activity consisted only of promotional work, delivery of bids, transfer of title, delivery of machines and servicing." It regarded these factors, coupled with the use of the article sold, as insufficient to justify the application of the tax under the Illinois decisions.

*Automatic Voting Machine Corporation v. Daley,** 100 N. E. 2d 591. Jacob Shamberg, Bernard J. Lorzen and John J. Mortimer, Corporation Counsel, (Edward W. Parlee and John P. Daley, of counsel), of Chicago, for appellant. Ivan A. Elliott, Attorney General, of Springfield (Robert J. Burdett and John T. Coburn, of Chicago, of counsel), for appellee. Commerce Clearing House Court Decisions Requisition No. 454710.

* The full text of this opinion is printed in the **State Tax Reporter,** Illinois, page 6447.

MISSISSIPPI

State privilege tax upon those soliciting business for a laundry not licensed in state as such, held by Federal Supreme Court not applicable to a foreign corporation soliciting business for its laundry in another state.

In *Stone vs. Memphis Steam Laundry Laundry Cleaner, Inc.*, decided June 11, 1951, The Corporation Journal, December 1951-January 1952, page 54), the Mississippi Supreme Court upheld a privilege tax imposed at $50. for each county "upon each person soliciting business for a laundry not licensed in

this state as such," where levied upon a foreign corporation soliciting business for its laundry in another state, measured according to the number of vehicles used in Mississippi.

Upon appeal, the Supreme Court of the United States has reversed this judgment and held that the tax so applied infringes the commerce clause of the Federal Constitution, regarding it as a tax on interstate commerce, which could not stand, either if regarded as a tax upon the privilege of soliciting interstate business or whether regarded as a tax upon the company's Mississippi activities of picking up and delivering laundry and cleaning. Emphasizing that the tax was made applicable to those soliciting business for a laundry "not licensed in this state as such," the court noted discrimination against interstate commerce, and that the tax imposed "made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the commerce clause."

Memphis Steam Laundry Cleaner, Inc. vs. Stone, Supreme Court of the United States, March 3, 1952; Docket No. 253. Commerce Clearing House Court Decisions Requisition No. 469892.

NEVADA

Corporation qualified in 1941, while subject to 1949 legislation calling for filing of charter amendments, held not required to pay additional filing fees provided for by 1949 and 1951 legislation, related to filing of amendments which increased authorized capital stock of corporations.

The relator, a Delaware corporation, was admitted to do business in Nevada in October, 1941. At that time, it had an authorized capital stock of $350,000,000. and paid a fee, based upon this amount of $7,350. There was then no statutory requirement that foreign corporations file with the Secretary of State copies of any amendments which might subsequently be made to their articles of incorporation. In 1949, Chapter 228, amended the statutes to provide for such filing of charter amendments. In that year, the filing fees based upon authorized capital stock of foreign corporations were increased. These fees were again increased in 1951. The company's articles were amended in 1949, subsequent to the effective date of Chapter 228 providing for the filing of charter amendments, to increase its authorized capital to $500,000,000. Later in that year the company tendered to the respondent Secretary of State a copy of the amendment and demanded it be filed without exaction of a fee. Respondent refused to file it unless the then statutory fee in the amount of $15,000 were paid. After the effective date of the second increase in fees in 1951, the company's articles were again amended pursuant to Delaware law to increase its authorized capital to $1,000,000,000. A tender of this amendment with a demand that it be filed without exaction of a fee resulted in respondent's refusal to file unless the then statutory fee in the sum of $97,500 were paid.

The company's demand on both occasions was based upon its contention that the statutory fee, under the circumstances, was invalid in violation of the commerce clause of the United States Constitution and of the due process clause of the fourteenth amendment.

The Supreme Court of Nevada, after a consideration of pertinent decisions of the Supreme Court of the United States, concluded that "once a foreign corporation has been granted permission to enter a state for the purpose of doing local business and thereafter engages in both local and interstate business, a fee purporting to be an 'entrance fee,' provided by a statute subsequently enacted and based upon its total authorized capital stock cannot constitutionally be demanded of it by what would in effect be a retroactive application." "It would, therefore, appear clear that for a charge reckoned upon total authorized capital stock (applied to a foreign corporation engaged in both local and interstate business) to avoid violation of the commerce and due process clauses it must have existed as a condition (either precedent or subsequent) of the corporation's original admission to the state. If the corporation's admission originally was free from such a condition, the condition may not be subsequently imposed." "The state at the time of relator's original admission imposed no requirement as to the filing of amendments to corporate articles of foreign corporations. This requirement, together with the fee imposed therefor, was enacted after the corporation's admission to the state. Such a condition to the engaging in local business imposed under these circumstances must be held to violate the commerce and due process clauses of the United States constitution and the fourteenth amendment."

*State ex rel. The Texas Company v. Koontz, Secretary of State,** Supreme Court of Nevada, January 29, 1952. John S. Sinai and John S. Bedford of Reno, for relator. W. T. Mathews, Attorney General, George P. Annand, Robert L. McDonald and Thomas A. Foley, Deputy Attorneys General, of Carson City, for respondent. Commerce Clearing House Court Decisions Requisition No. 468058.

* The full text of this opinion is printed in the **State Tax Reporter, Nevada, page 507.**

OHIO

Supreme Court of the United States holds boats and barges of Ohio company used between points in other states, not taxable in Ohio for property tax purposes.

In *The Standard Oil Co. v. Glander et al.*, 155 O. S. 61, 93 N. E. 2d 8, (The Corporation Journal, November, 1951, page 34), the Ohio Supreme Court ruled that an Ohio company was taxable in Ohio for property tax purposes, on its boats and barges used between points in other states.

Upon appeal, the Supreme Court of the United States has reversed this judgment. The court referred to its ruling in *Ott v. Mississippi Valley Barge Line Company et al.*, 336 U. S. 169, 69 S. Ct. 432, 653, (The Corporation Journal, April, 1949, page 313), where it held that watercraft, owned by foreign barge corporations, engaged in interstate commerce, which came within the boundaries of a taxing state at irregular intervals, were taxable if the tax was fairly apportioned to commerce carried on within the state. In that case, the taxing state sought to tax only that portion of the value of the vessels represented by the ratio between the total number of miles in Louisiana and the total number of miles in the entire operation. The court also distinguished cases such as that of *Northwest Airlines, Inc. v. Minnesota*, 322 U. S. 292. (The

Corporation Journal, October, 1944, page 214), in which the domiciliary state was allowed to tax the entire fleet of airplanes operating interstate, where it was not shown that "a defined part of the domiciliary corpus" had acquired a taxable situs elsewhere. "Those cases," remarked the court, "though exceptional on their facts, illustrate the reach of the taxing power of the state of the domicile as contrasted to that of the other states. But they have no application here since most, if not all, of the barges and boats which Ohio has taxed were almost continuously outside Ohio during the taxable year. No one vessel may have been continuously in another state during the taxable year. But we do know that most, if not all, of them were operating in other waters and therefore under *Ott v. Mississippi Barge Line, supra,* could be taxed by the several states on an apportionment basis. The rule which permits taxation by two or more states on an apportionment basis precludes taxation of all of the property by the state of the domicile. See *Union Transit Co. v. Kentucky,* 199 U. S. 194. Otherwise there would be multiple taxation of interstate operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations."

*The Standard Oil Company v. Peck, Tax Commissioner et al.,** 72 S. Ct. 309; Docket No. 184, Commerce Clearing House Court Decisions Requisition No. 467953.

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* The full text of this opinion is printed in the **State Tax Reporter,** Ohio, page 10,168.

state legislation

Colorado — House Bill 33, Laws of 1952, amends the income tax law so as to extend the 20% income tax reduction through the calendar year 1952 and to fiscal years beginning in 1952 for both corporations and individuals.

Georgia — Act No. 862 of 1952 contains a method for the surrender by a domesticated foreign corporation of its domestic status, after which the company becomes an ordinary foreign corporation.

H. B. 663 of 1952 outlines conditions under which shareholders are and are not entitled to exercise preemptive rights and also provides for voting trusts which are limited to a period not exceeding ten years.

Kentucky — House Bill No. 69 of 1952 makes permanent the increase in the rate from 4% to 4½% of the corporate income tax which had been scheduled to continue for two years under H. B. 446, Laws of 1950.

Massachusetts — Chapter 750, Laws of 1951, requires that the entire amount of the 1952 Corporation Excise Tax on business and manufacturing corporations be paid when the return is filed on April 10, 1952.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

GEORGIA. Docket No. 1. *Georgia Railroad & Banking Company v. Redwine,* 85 F. Supp. 749. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.) **Restored to the summary docket for reargument, November 5, 1951. Reargued, November 26, 1951. Reversed and remanded to Federal court on procedural grounds, January 28, 1952.** (72 S. Ct. 321.)

MISSISSIPPI. Docket No. 253. *Memphis Steam Laundry Cleaner, Inc. v. Stone,* Mississippi Supreme Court, June 11, 1951. (The Corporation Journal, December—January, 1952, page 54.) Privilege tax applied to soliciting of business for out-of-state laundry—interstate commerce. **Appeal filed, August 17, 1951. Jurisdiction noted, October 8, 1951. Argued, December 3, 1951. Judgment reversed, March 3, 1952.** (See page 93.) **Motion of appellant for issuance of the mandate forthwith, counsel for appellant agreeing, granted, March 10, 1952.**

OHIO. Docket No. 85. *Perkins v. Benguet Consolidated Mining Company,* 93 N. E. 2d 33. (The Corporation Journal, June, 1951, page 349.) Unlicensed foreign corporation—doing business—service of process—suit involving recovery of dividends on stock. **Petition for writ of certiorari filed, May 29, 1951. Certiorari granted, October 8, 1951. Argued, November 28, 1951. Judgment vacated and cause remanded, March 3, 1952.** (See page 89.)

OHIO. Docket No. 184. *Standard Oil Co. v. Peck et al.,* 155 O. S. 61. (The Corporation Journal, November, 1951, page 34.) Property taxes on boats and barges of an Ohio company used outside the state and machinery and equipment in process of construction. **Appeal filed, July 9, 1951. Jurisdiction noted, October 8, 1951. Argued, January 4, 1952. Reversed, February 4, 1952.** (72 S. Ct. 309.) (See page 95.)

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1951-1952.

regulations and rulings

Colorado — Foreign corporations which have neither agents nor stocks of goods in Colorado and which engage in no other activities there, are not doing business nor deriving income from sources within Colorado and are accordingly not subject to the Colorado income tax, even though goods are shipped to customers in Colorado pursuant to orders received by mail, telephone and telegraph. (Reg. Art. 17-1, Department of Revenue, State Tax Reporter, Colorado, ¶ 10-806a.)

Georgia — Where the charter of a Georgia corporation authorizes "debenture preferred stock," initial fees of 10¢ per $1,000. of authorized stock are due on such stock. (Opinion of the Attorney General, State Tax Reporter, Georgia, ¶ 1-207.)

The 1951 decision of the Supreme Court of the United States in the Spector Motor Service case is distinguishable and inapplicable in respect to the income tax liability of foreign corporations engaged in exclusively interstate commerce within Georgia. A foreign corporation whose representatives are engaged within Georgia in activities such as the solicitation, demonstration, taking of orders, or any other promotional activity which results in the shipment of goods into Georgia is subject to the Georgia income tax. (Opinion of the Attorney General to the Director, Income Tax Special Assessments, Department of Revenue, State Tax Reporter, Georgia, ¶ 14-538.)

Maryland — A Maryland corporation is not required to file a stock issuance statement, under Section 16(e) of Chapter 135 of 1951, for the sale of shares of stock without par value made at a time when there are no other shares of that class of stock outstanding. (Opinion of the Attorney General to the Secretary of State Tax Commission.)

Montana — In order for a foreign corporation or joint stock company, except foreign insurance companies and corporations otherwise provided for, to fully and properly qualify to do business in Montana, it is necessary that articles of incorporation, or a duly certified copy of their charter, together with the statement of facts required by statute be filed *both* with the Secretary of State and with the County Clerk in the county wherein its principal office or place of business in Montana is located. (Opinion of the Attorney General to the Secretary of State.)

Ohio — Foreign corporations, upon becoming relicensed to do business in Ohio after previous withdrawal from the state may be allowed a credit for the number of shares represented under the prior license, and the fee upon requalification is to be based on the increase in authorized shares. Thus where a foreign corporation surrenders its license and subsequently becomes relicensed, the fee payable to the Secretary of State on the first report thereafter filed is to be computed as though the corporation had not left the state. The initial installment of the license fee need be paid only by those corporations "not heretofore licensed to transact business in this state." This interpretation is regarded as not applying to corporations which were never licensed under the present act, which has been in effect since 1931. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Ohio, ¶ 200-038.)

some important matters

For April and May

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Franchise Tax due April 1 but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Alaska — Returns of Tax withheld at the source due on or before April 30.—Domestic and Foreign Corporations.

Arkansas — Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Colorado — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

Connecticut — Quarterly Retail Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due after April 1 and before July 1.—Domestic Corporations.

Returns of Information at the source due on or before April 30.—Domestic and Foreign Corporations making certain payments of salaries, dividends, interest or other income to residents of Delaware during 1951.

District of Columbia — Franchise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Indiana — Quarterly Gross Income Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

Iowa — Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Kansas — Income Tax Return due April 15.—Domestic and Foreign Corporations.

Kentucky — Income Tax and Corporation License Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Louisiana — Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Maryland — Annual Report (Personal Property Return) and Franchise Tax Report and Tax due on or before April 15.—Domestic Corporations.

Income Tax Return due April 15.—Domestic and Foreign Companies.

Annual Report (Personal Property Return) and Filing Fee due on or before April 15.—Foreign Corporations.

Quarterly Returns of Tax Withheld at the source due on or before April 30.—Domestic and Foreign Companies.

Massachusetts — Excise Tax Return due on or before April 10.—Domestic and Foreign Corporations.

Missouri — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Montana — Annual Statement due within two months from April 1.—Foreign Corporations.

New Jersey — Franchise Tax Report and Tax due on or before April 15.—Domestic and Foreign Corporations.

New Mexico — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due May 1.—Domestic and Foreign Corporations.

New York — Annual Franchise (Income) Tax Return (Form 3 CT—Article 9A, Tax Law) and one-half of tax due May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

North Dakota — Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Oregon — Excise (Income) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before April 30.—Domestic and Foreign Corporations.

Pennsylvania — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Rhode Island — Semi-Annual Report to Department of Industrial Inspection during April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

Business Corporation Tax Return and Tax due on or before May 1.—Domestic and Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

Texas —Annual Franchise Tax due May 1.—Domestic and Foreign Corporations.

United States — Withholding at source due on or before April 30.—Domestic and Foreign Corporations.

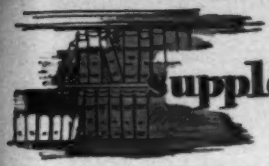
Vermont — Income (Franchise) Tax Return due on or before May 15.—Domestic and Foreign Corporations.

Virginia — Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Income Tax due June 1.—Domestic and Foreign Corporations.

West Virginia — License Tax Report due in April.—Foreign Corporations.

Quarterly Business and Occupation (Gross Sales) Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.



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